

BOARD OF APPEALS
for
MONTGOMERY COUNTY

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600

Case No. A-5576

PETITION OF MARK COLLETTA

(Hearings held May 9, 2001 and February 6, 2002)

OPINION OF THE BOARD

(Effective date of Opinion, May 9, 2002)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59 Mont. Co. Code 1994, as amended) for a variance from Section 59-C-1.326(a)(2)(c). The existing accessory structure (pole barn) requires a 9.83 foot variance as it is within 2.17 feet of the side lot line. The required setback is twelve (12) feet.

The subject property is Lot 9, Block 64, Rolling Knolls Subdivision, located at 19308 Muncaster Road, Derwood, Maryland, in the RE-1 Zone (Tax Account No. 00006781).

Decision of the Board: Requested variance **denied**.

EVIDENCE PRESENTED TO THE BOARD

1. The original variance hearing was held on May 3, 2001. At the close of the hearing, the record was left open for the petitioner to consider modification of the variance request. The public hearing was continued on February 6, 2002.
2. The petitioner seeks a variance for the existing 26 x 32 foot pole barn located in the southern side yard. The petitioner testified that the existing structure is a result of the replacement of a deteriorated 16 x 12 foot structure located at the same site.
3. The petitioner testified that the property has an existing septic system and that the current location of the pole barn would not impact the septic system. The petitioner testified that the pole barn could not be located elsewhere on the lot and could not be moved forward because of an existing Willow tree. The petitioner testified that the structure is used for family storage.

FINDINGS OF THE BOARD

Based upon the petitioner's binding testimony and the evidence of record, the Board finds that the variance must be denied. The requested variance does not comply with the applicable standards and requirements set forth in Section 59-G-3.1(a) as follows:

- (a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

The Board finds that the petitioner's lot has no exceptional topographical or other conditions. The Board finds that the property is consistent in shape and size with the other properties on the same side of the street, as shown on Exhibit No. 8.

The Board further finds that the property's existing conditions do not prevent the relocation of the structure on the property to an area that would not require a variance.

(b) Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions

The Board finds that the size of the existing structure is not the minimum reasonably necessary.

The petition does not meet the requirements in Section 59-G-1.3(a) and (b) and the Board did not consider the other requirements set forth in that section for the grant of a variance. Accordingly, the requested variance of 9.83 feet from the required twelve (12) side lot line setback for the existing accessory structure (pole barn) is denied.

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above is adopted as the Resolution required by law as its decision on the above entitled petition.

On a motion by Louise L. Mayer, seconded by Allison Ishihara Fultz, with Donna L. Barron, Angel M. Caputo and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the following Resolution.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

I do hereby certify that the foregoing Opinion was officially entered in the Opinion Book of the County Board of Appeals this 9th day of May, 2002.

Katherine Freeman
Executive Secretary to the Board

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.